

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LUIS ACEVEDO,

Plaintiff,

v.

Case No. 21-cv-14-pp

HEATHER NICHOLS,

Defendant.

**ORDER DISMISSING CASE WITHOUT PREJUDICE FOR PLAINTIFF'S
FAILURE TO DILIGENTLY PROSECUTE IT**

On November 1, 2022, the court received from the defendant a motion asking the court to compel the plaintiff to respond to discovery demands or face dismissal of his claims for failure to prosecute them. Dkt. No. 18. The plaintiff did not respond to that motion.

On March 17, 2023, the court issued an order requiring the plaintiff to show cause why the court should not dismiss the case for his failure to participate in discovery and diligently prosecute it. Dkt. No. 22. The court explained that if the plaintiff wished to proceed with the case, he must file a written explanation for why he had not participated in discovery “in time for the court to *receive* it by the end of the day on **April 21, 2023.**” Id. at 3. The court advised the plaintiff that if the court “does not receive the plaintiff’s written explanation of why this case should not be dismissed for his failure to prosecute by the end of the day on April 21, 2023, the court will grant the defendant’s motion and dismiss the case without prejudice.” Id. The court sent

that order to the plaintiff at New Lisbon Correctional Institution, where he remains incarcerated and where the court and the defendant have sent him papers, including the defendant's motion to compel discovery. Id. at 2.

The April 21, 2023 deadline has passed, and the court has not received anything from the plaintiff. The court will enforce the previous order, grant the defendant's alternative motion and dismiss this case without prejudice.

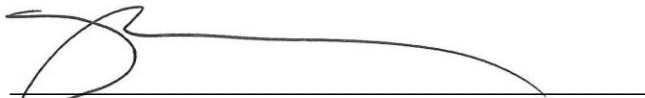
Although that means the plaintiff may refile this case at a later date, subject to the statute of limitations, the court advises the plaintiff that continued failure to abide by court orders or diligently litigate any case he files likely will result in dismissal of that case as well, perhaps with prejudice. See Civil Local Rule 41(c) (E.D. Wis.) ("Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.").

The court **GRANTS** the defendant's motion to compel discovery or to dismiss for failure to prosecute. Dkt. No. 18.

The court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** for the plaintiff's failure to diligently pursue it. The clerk will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 28th day of April, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge